Estate and Charitable Planning and Succession Strategies: Exploring the Future

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All Should Plan but Facing Need Eludes too Many

The flower people got it right and the mobster got it wrong. The rest of the population that is taking steps, or at least considering steps toward estate or charitable planning or succession strategies for family businesses is somewhere in between.

And perhaps the most compelling statistic is one offered by John C. Henberger Jr., president and founder of Henberger Group, that, while 93 percent of owners of closely held businesses know they should be planning their exit, only 13 percent are.

Estate-planning experts suggest that small slice is likely an accurate estimate as well for those who should be thinking about estate and charitable planning or wealth management challenges, in addition to business issues such as valuation, transition or exit planning.

It's the high-visibility incidents keyed to planning failures that frequently cause a moment of pause for procrastinators, those who view themselves as "too busy" or those who view planning as "too costly."

The "flower people" referred to at the beginning of this article are the Ecke family who, with technical expertise from Paul Ecke and marketing acumen from Paul Ecke Jr., turned the winter-blooming poinsettia into a holiday flower in demand across the country.

For more than 90 years, down through the third Ecke generation, incorporating the next generation was a key to succession planning, as well as buttressing the far-flung, Encinitas-based, poinsettia business with real estate acquisition and development.

Finally, last year came the exit strategy. In the face of global competition accentuated by researchers discovering the grafting secret that originally made the poinsettia a flowering plant, Ecke III had moved production to Guatemala to lower costs, but decided to sell the company to a Dutch multinational.

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Wealth and Legacy Planning in Today's World

What is Important to the Family, its Goals and Desires for the Future

(Editor's Note — **Bill Super***, owner of William Super CPAs & Consultants, has been practicing in the wealth and legacy planning arena for more than 30 years. Active in STEP, the international planning organization, and ACG, the M&A organization. Bill's practice revolves around estate and charitable planning, philanthropic and legacy planning, family business succession planning, and M&A.)*

Welcome, San Diego Business Journal readers. The North County Estate Planning Council- San Diego is proud to be partnering with the San Diego Business Journal in producing this Estate and Charitable Planning and Business Succession Strategies Supplement. The NCEPC-SD, its members and their firms are some of the top estate planners in San Diego and hope that the articles included in this supplement provide you with background as well as stressing the importance of planning for you, your families and your businesses.

William (Bill) Super

Wealth and Legacy Planning contemplates a comprehensive approach for planning for a family and its wealth, be it stocks and bonds, a business, real estate holdings, or more importantly, the family's values and its legacy. Since the elements of a family's wealth are each different for each family, the planning process is also different. Nevertheless, the process is the same: it all starts with what is important to the family—its goals and desires for the future. This is a process of exploration that the experienced estate planner is quite adept at helping a family through Discovery. From there a gathering of the important facts the next key step and can be as complicated as the financial picture of the family.

With the different people that come together in building a comprehensive plan it is imperative that the team collaborates with together to best insure that the family's goals are met and the plan is implemented thoughtfully. The team

would consist of the following members, depending on the complexity of one's estate:

- Estate Planning Attorney
- Certified Public Accountant
- Life Insurance Professional
- Trust Professionals
- Wealth or Investment Professional
- Charitable Giving Professional
- Family Legacy and Philanthropy Professionals
- Family Business Succession Planner--If the business is to be passed on to the family
- Business Attorney--if there is a business
- Business Valuation Professional
- Merger & Acquisition Professionals--if the business is to be sold
- Real Estate Attorney and/or Advisor--if there are real estate holdings

You might think this is a lot of expensive fire-power that is being brought to the planning process, but keep in mind that this planning is not an expense, but really an investment in the successful implementation of a thoughtful plan that helps you and your family and business achieve your goals.

A classic example of this is in the Planning for an Exit from Your Business: An experienced team that works in this arena, M&A attorney, CPA, Business Valuation Professional, Investment Banker, etc. addresses many different elements ranging from financial statement quality, the company's strategic plans, budgets and if they are achieved and exceeded, expense management to the leadership and management team, sales diversification and much more. This "getting the business ready for sale" might actually cost some hundreds of thousands of dollars, but the resulting increase in value of the company might be in the millions of dollars. This, as you know, is called "return on investment".

Clearly, the more wealth that is present as well as the different components of that wealth will impact the complexity of the plan that is needed to achieve your goals.

You will see in the articles that follow some of the top experts not only in San Diego, but in the country as they address some of the different elements of a comprehensive plan you might require. If a closely held or family business is a significant part of your wealth, we have articles on passing on the family business and the myriad people issues that arise when there is a family business, as well as an article on planning your exit from the business. With the very international world that is present, there are many issues that arise with the international business family. In today's economy, with low, but likely rising interest rates, as well as the still depressed values of real estate and businesses, there are many opportunities that exist to pass wealth to different generations If that is part of your goals and desires.

Lastly, but maybe most importantly, there is planning to leaving a legacy and philanthropy. This may be the most important planning that the successful planner will consider. With wealth there is the opportunity to make a difference or give back to the community: hence philanthropy and passing on a family's values might be the most rewarding part of this planning process.

The North County Estate Planning Council- San Diego thanks you and hope that we have provided you with some thoughts that resonate with your own family's circumstances and that we might have spurred you on to planning for your future. ❑

OVERVIEW

< From the cover

With his son studying to be a mechanical engineer and his daughter only 12, he says, "I didn't think it was the right business for my kids." It was part of the planning for the future of the next Ecke generation.

The "mobster" who got it wrong was actor James Gandolfini, who made Tony Soprano a household name. He died suddenly in June of a heart attack at age 51. The shock of his death soon turned to shock over his seemingly ill-conceived estate plan. His will turned out to be so poorly drafted that up to 80 percent of his assets were rumored to be subject to a 43 percent estate tax.

Attorney Jeffrey M. Verdon of the Jeffrey M. Verdon Law Group LLP wrote in his blog about what he described as "the irony" that came into play with the actor's death.

"While Gandolfini's iconic Soprano's character spent his life running from the government, the actor who played him on TV made the government his primary beneficiary," Verdon wrote.

Noting, "I don't think he did it on purpose," Verdon offered two points to his readers.

1. Hire the Best Estate Planning Team You Can Afford

If you have a significant estate (say north of $10M) and invested more for the car you drive than your estate planning, you can expect that your estate, like that of Gandolfini's, will likely get 'whacked' with unnecessary lawyer's fees, probate administration fees and death taxes when you die.

2. Get Out of Your Own Way

Know enough to know when you don't know enough.

Mr. Gandolfini's estate lawyer goes on record to indicate that his client made his own decisions, despite possible advice to the contrary.

Experts note that over the years, the estate planning scene has continued to change, particularly bringing a greater understanding of the importance of what are referred to as "the people issues" that have come to underpin the whole array of planning arenas.

As one expert noted, working in a collaborative team environment has also been recognized as the key to the successful implementation of a thoughtful, comprehensive plan.

Estate planning councils, such as the Estate Planning Council of North County-San Diego, have emerged around the country as organizations that bring together top collaborative team members and offer information and speakers that help facilitate the collaborative approach to planning.

The fact is that planning in all the arenas, from estate and wealth and legacy to all the business planning issues, is complicated and growing more so each year.

And the role of estate planning councils is to bring competent, thoughtful planners to the game as well as helping enhance the idea of collaborative planning teams.

The best-trusted advisors know what they know, know what they don't know, but know who to reach out to solve their client's needs and challenges. Those advisors who merit the trust of their clients will reach out to others who bring areas of expertise that they don't personally possess.

Experts who focus on the importance of collaborative planning teams note that it's imperative that team members leave their egos at the door, since the goal is helping clients achieve their goals and objectives.

So whether it is estate and charitable planning, where the attorney, CPA, life insurance professional, and planned-giving professional are involved, or business exit planning where the "business exit planner", the M&A attorney, CPA, business valuation planner come into play, each has a role. And working together, the team will get a thoughtful plan implemented. ❑

Credits

Laura Stumbaugh did the layout and design of this special editorial supplement and **Betta Ferrendelli** was responsible for editing the articles and the final design elements of the publication.

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Life Insurance Can Benefit Succession Plan

Policies Provide Heirs Financial Flexibility, Operating Cash

*(Editor's Note — **David Jacobs** is a partner with Grant, Hinkle & Jacobs, a group of advanced life insurance professionals who emerged from the attorney field.)*

Estate planning often presents challenges for family business owners as they strive to plan for business continuity while generating accessible wealth for their families. Ensuring that their companies and estates have sufficient liquidity to meet their liabilities in the face of increasing tax rates and limited borrowing availability places additional pressures on family business owners. Fortunately, the incorporation of life insurance into a business owner's succession plan can address a majority of these concerns, often in a tax-efficient manner.

Life insurance offers several benefits not associated with other investments. Death benefits paid under a life insurance policy generally are not subject to income taxes. If properly owned, they can also be estate tax free.

With thoughtful planning and the use of specially designed life insurance policies, the value of the business can be protected and family harmony preserved. In fact, life insurance is commonly used by the owners of successful companies to accomplish a variety of important business perpetuation and estate planning objectives.

Funding a Succession Plan

Owners of privately held businesses have worked hard over their lives to build enterprise value, and they want to preserve it for themselves and their families. Unfortunately, much of that value can be lost when the owner retires, becomes disabled or dies.

Privately-held businesses should have a written succession plan in place that provides a legal mechanism for the transition of ownership under these circumstances without having to liquidate the company. Once such an agreement is finalized, the promises in it become legally binding. An insurance policy on the life of the business owner provides the buyer with the financial means to follow through on the agreement; without it, it could be just an empty promise.

David Jacobs

Insurance on the life of each owner is the best way to fund a succession plan, because it provides the cash needed by the company or the surviving shareholders to purchase the departing owner's interest in the business. The cash value in a life insurance policy, which grows tax-deferred, is accessed to pay for a lifetime purchase of an owner's interest, while the death benefit is used to fund a purchase if the owner dies.

If policies are company owned, multiple policies may be used to fund this lifetime buyout, which means the insured doesn't have to match the payee.

Equalizing an Estate

Business owners can use life insurance to provide equitable treatment to those children who are not involved in the business. Leaving the company to the children who are actively involved in its operations and the life insurance to the children who are not can equalize the inheritances among all of the children and reduce friction. This structure also avoids the need for the active children to purchase the interests of the inactive children, which may occur at a time when the business is unable to afford it.

Creating Estate Liquidity

If the deceased owner's estate is subject to estate tax, which is generally due nine months after date of death, the heirs may be forced to liquidate business interests in order to pay the tax bill. It can be challenging, however, for anyone to command a fair price for a decedent's illiquid business interest when it must be made liquid quickly and when there is no readily accessible market for the sale of most closely-held companies.

However, by insuring the business owner's life, the value of the business can be preserved because the policy death benefit will provide the heirs with enough cash to pay the estate taxes rather than forcing them to liquidate business interests.

Typically, the insurance policy will be owned by an irrevocable trust so that the heirs will receive the death proceeds both income and estate tax free.

An insurance policy on the owner's life can also be beneficial to the heirs in generating the highest return for the sale of the business. The insurance provides the family with

See **Insurance** page S5 >

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New Philanthropy: Measured Impact, Legacy

Young Donors Want to be Part of Something That They Value

*(Editor's Note — **Doug Freeman** is a Senior Managing Director of First Foundation Advisors, a wealth management and advisory firm. Doug is an estate planning attorney who focuses on family issues with families with wealth and businesses. He is the founder of National Philanthropy Day, celebrated in cities across the United States.)*

Every charity is asking for the same help—new donors, more resources and bright, affluent and influential, younger and more diverse board leadership. It comes as no surprise to these organizations that many of their current supporters, volunteers and board members are aging, retiring and withdrawing. The Great Recession was more than an economic meltdown. In many respects, it was the trigger to a change in the patterns and interests of donors, of all ages and demographics. The break in the rhythm of philanthropy gave donors a chance to reflect on what was truly important to them. If I have less time and money, these thoughtful philanthropists were thinking, where can I make a personal commitment, have the greatest impact, and leave a legacy for my family that reminds future generations of the importance of participating in enhancing the quality of life for others.

With the meltdown came a greater focus on priorities. Instead of spreading dollars to multiple galas and social events, more money was going into programs and people. Instead of large unrestricted gifts, the contributions came with greater strings and more conditions. Instead of smaller gifts to many organizations, donors tended to give larger gifts to fewer organizations.

Contributions were still coming, but in smaller amounts and with long payment commitments. Campaigns were extended from five years to seven and even 10 years. Messaging went from general slogans about the worthiness of the organization to very specific and much more emotional pitches related to lifeline support for families and children, crucial health care requirements, survival of the cultural life of the community, and the like.

Doug Freeman

The "then" and "now" of philanthropy has changed dramatically and we are only beginning to see the effects. The children of the Depression and those born before 1946 (often called the "Silent Generation") historically directed their philanthropy to high profile national and local institutions that were trusted and respected. They appealed to donors because of their size and tradition. The Boomers launched their version of entrepreneurial philanthropy, venture philanthropy and the concept of socially responsible investing.

Today, the progeny of those donors, from members of the Generation X (the group born from 1965 to 1980) to the Millennials (born between 1981 and 2000) are looking for innovative solutions, measurable impact, and personal engagement. They share distrust for institutions and are more receptive to their peers. They want to be physically, mentally and emotionally involved. Check writing is the least interesting element of their philanthropy.

Individuals volunteer where their heart and passion lies. In the 2012 Bank of America Study of High Net Worth Philanthropy, "those who volunteer more than 100 hours gave more than $78,000 on average, roughly twice the average gift among those who volunteered fewer than 100 hours". Another telling statistic is that these high net worth individuals give more to those organizations where they both volunteer and believe their gift will have the largest impact. According to the Bank of America Study, average gifts to those organizations grew 40 percent between 2009 and 2011 (from $73,301 to $102,642).

> "Today, the progeny of donors, from Generation X to the Millennials, are looking for innovative solutions, measurable impact and personal engagement. They want to be physically, mentally and emotionally involved."

Today, charities are serving a different demographic. They have to adjust their message and their outreach. The language has changed to focus on "double bottom line", meaning "making a profit in a socially responsible way, or "triple bottom line", meaning people, planet, and profit). This concept recognizes a wide range of measuring organizational (and societal) success focusing on economic, ecological and social outcomes. Metrics must assess more than quantitative factors. It requires addressing such qualitative issues as attitudes, fears and aspirations, emotional well-being and core values. In other words, the philanthropy of these new generations will demand greater accountability, more financial transparency, and higher touch.

These younger donors want to be engaged in something that has value to them, something that usually involves a hands-on approach, including sweat equity. Even older and more experienced donors, those who have the time, talent, and treasure sought after by all charitable organizations, are asking "how will my support make a difference". Our most worthy organizations do just that. They just have to tell the story in a compelling way.

There is more competition for the donated dollar than ever before. Every not-for-profit organization is saying that resources are down and needs are up and donors are responding, 'I may give, maybe a bit less and over a longer period of time, but you will have to convince me why I should." Donors of all ages are asking "why you", "why now", and "how will I make a difference." It seems clear that organizations that have a compelling story, good execution, a good stewardship, are more likely to survive and thrive.

The key to today's donors is to connect their head and their heart. If you do so, the pocketbook will follow. If you miss either of these primary targets, you'll likely receive, at best, the scraps of philanthropic support, and perhaps nothing at all. ❑

INSURANCE

< From page S4

financial flexibility they need while searching for a satisfactory price. It delivers cash needed by the heirs to operate the business and bridge the gap between the owner's death and the sale of the business.

Providing Executive Benefits

A nonqualified deferred compensation (NQDC) plan can be used by family businesses to provide members of the senior generation with death, disability and retirement benefits. It may be particularly meaningful for the senior members who have transitioned the business to the junior members and are no longer receiving compensation from the business but still desire income to meet their retirement needs.

A NQDC plan is also useful to ensure that key employees remain with the business, especially during sensitive periods of generational transition. A NQDC plan is often referred to as a "golden handcuff" because it incentivizes key talent to stay and perform to specific metrics in exchange for a promise of future benefits by the employer.

Because it offers both tax-deferred cash value growth and tax-free death benefits, life insurance is the most popular vehicle used for generating the cash necessary for the businesses to meet its NQDC plan obligations and recover the costs associated with providing the benefits to the key employee and his family.

> "Insurance on the life of each owner is the best way to fund a succession plan because it provides the cash needed by the company or the surviving shareholders to purchase the departing owner's interest in the business."

Managing Key-Person Risk

Many family businesses depend on nonfamily employees, such as a lead salesperson or Chief Financial Officer (CFO), for the company's continued success. To guard against financial harm to the business due to the loss of an indispensable key employee, the company will insure their lives. The insurance provides cash to the business to compensate for lost revenue as well as the time and resources needed to hire a competent replacement.

Call to Action

If you own a closely held business, strategically designed life insurance can be an essential tool to protect your wealth and accomplish your succession and estate planning goals in a tax-efficient manner. The peace of mind that you will gain by knowing that the value of your hard work will be preserved for you and your family is invaluable. Contacting and working with competent legal, tax, and insurance professionals who understand your business and communicate regularly on your behalf is the first place to start. ❑

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Good Planning a Must in Business Succession

Starting the Process Early Can Ensure a Successful Transition

*(Editor's note — **Lou Mezzullo** is a partner and part of the Private Client Services Group at the McKenna, Long & Aldredge law firm and is a nationally recognized estate planner who focuses on business succession strategies. He is the immediate Past President of the American College of Trust & Estate Counsel (ACTEC). He was elected to the National Association of Estate Planners & Councils (NAEPC) Estate Planning Hall of Fame as an Accredited Estate Planner.)*

Perhaps the most challenging issue facing the owner of a family business is planning for the eventual disposition of the owner's interest in the business. The goal is to avoid the loss of value because of the lack of proper planning or failure to implement the plan and, at the same time, to carry out the owner's personal desires. The mixture of business and personal objectives makes the decisions more difficult, involving economic and psychological considerations.

Business succession planning is planning for the orderly transfer of the management and the ownership of a business to new managers and new owners to avoid a liquidation of the business as well as unnecessary taxes and other expenses. The object is to do this in a manner that carries out the family's nontax objectives. Note that the ownership of the business and the management of the business may go to different people. For example, the owner may have several children, but only some of them are interested in, or capable of, actively participating in the operation of the business. Consequently, the management of the business may pass to those children active in the business, while the ownership of the business may pass to all the children. Management may also go to nonfamily members, particularly when none of the family members is interested in the business but the business is capable of compensating a nonfamily member for assuming responsibility for running the business.

Louis Mezzullo

The succession issue should be addressed as soon as possible. Waiting too long makes customers, suppliers and creditors nervous. If the decision has been made to sell the business to a nonfamily individual or entity, the sale should take place while the entrepreneur is still capable of providing consulting services. In many cases, a prospective purchaser of a business will want the current owner to remain on following the sale as a consultant to ensure continuity and to maintain relationships with suppliers, creditors and customers. If the founder is capable of also starting a new business in the same or similar industry, he or she may also be compensated for agreeing to a noncompete agreement. If the entrepreneur becomes disabled or dies before the business is sold, it is likely that the value of business will be diminished. Furthermore, if the founder is not physically able to compete or is dead, the family will not receive the benefit of the additional compensation that would be paid for a noncompete agreement when the business is sold.

For most family business owners, the business represents the most valuable, and often the most illiquid, asset in the owner's estate. During the business owner's lifetime, the business is generally the primary source of economic and emotional support for the owner's family. As the primary asset of the owner's estate, the business will be the source of funds to pay estate taxes, debts and administration expenses, as well as to pay for the support of the surviving spouse and other dependents. Without proper planning, the business may have to be sold in order to meet the liquidity needs of the family. It may be that the need for liquidity to provide support for the family—rather than to provide for the payment of estate taxes—will be the primary cause for the sale of the business when the family would have, unfortunately preferred to have kept it.

The owner of a family-owned business faces unique problems. Should the owner sell the business during the owner's lifetime? This will depend on whether younger family members are interested or capable of assuming the responsibility for operating the business. Should the business be continued after the owner's death? It may be that the nature of the business is such that a sale of the assets of the business may provide more income to the family than retaining the business. This could be the case where the assets of the business are fairly liquid, but for a number of reasons the cash flow generated by the business is insufficient to provide for the family's cash needs.

Who will control the business after the owner's death? If the business will continue to be family owned, it will probably be important to ensure that the family also controls the business. However, if less than all of the children are going to be active in the business, control may be better placed in the hands of those who are active in the business. A related question is who will own the business after the owner's death. Ideally, only those children active in the business will also have ownership interests in the business to avoid conflicts later over company policy. However, in an effort to treat all children equally, the entrepreneur may be unwilling to give ownership only to those children active in the business. Related to this issue is whether the owner's children will be treated equally in the distribution of the owner's estate.

Finally, even though family members may control and own the business, the management of the business may pass to nonfamily members, because the younger family members either are not interested in assuming responsibility for managing the company or are incapable of doing so.

The owner's objectives for the business must be consistent with the owner's estate plan. For example, if the owner wants the business to pass to one particular child, steps must be taken to provide for the other children and the payment of taxes attributable to the business. If only some of the children are going to receive the business at the entrepreneur's death, and the value of the business is greater than their share would have been had the estate been distributed equally to all the children. It may be appropriate to have each child bare his or her proportionate share of the estate tax attributable to the value of the share he or he receives.

In conclusion, careful planning involving the entire family at an early stage, followed by implementation and follow-up, will significantly increase the chances for the successful transition of the business to the next generation. ❑

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Doing Business After Windsor Court Decision

Law Aims to Provide Tax Benefits for Both Employer, Employee

*(Editor's note — **Larry Conway,** owner of the Conway Law Group is an attorney and CPA, a background that lends itself to the comprehensive planning necessary when planning for same-sex couples in California and across the United States. Larry is a speaker and writer on planning for same-sex couples.)*

Back in 1996, bowing to pressure from conservatives over the possibility of same-sex marriages, Congress passed the Defense of Marriage Act (DOMA). DOMA, in part prohibited the federal government from recognizing marriages unless between a man and a woman, and allowed states (which usually recognize each other's laws) to reject recognition of any same-sex marriages performed in other states.

Larry Conway

> "It's important to keep in perspective that none of these changes would be necessary if an unconstitutional law hadn't been passed to begin with. When politicians make bad decisions, business has the burden of fixing things."

On June 26, 2013, the United States Supreme Court struck down as unconstitutional part of DOMA in U.S. v Windsor, making same-sex marriages recognized at the federal level. Changes will be massive, affecting more than 1,000 federal statutes and regulations in matters of tax, estate planning, Social Security, immigration, employee benefits, and many others. California has allowed registration as Domestic Partners (RDP) and treated it as the equivalent of marriage under state law for more than a decade. During 2008, same-sex couples were also allowed to marry before Proposition 8 passed. Now that Proposition 8 has fallen same-sex couples are marrying again.

All the changes brought about by recognition of same-sex marriages at the federal level will take time to sort out. Further, because the Supreme Court did not overturn the section of DOMA allowing states flexibility, many states still refuse to recognize such relationships and the changes will be confusing when applied across state lines.

What It Means to Your Business

Business had by this time adapted to the confusion of having employees in same-sex relationships (registered or married) that were recognized by California but not the federal government. Some businesses provided health insurance to spouses of employees, which required special handling for payroll purposes because the spousal portion was considered paid for or by an unrelated person making it taxable to the employee at the federal level. Likewise, retirement programs governed by federal tax and labor rules simply couldn't recognize a same-sex spouse so such plans just treated such individuals as single.

On August 29, the Internal Revenue Service (IRS) gave a view into post Windsor treatment of same-sex couples that will have some important impacts on employers. The first has to do with that "imputed income" the IRS said had to be calculated whenever an employer either paid for a same-sex spouse's (of an employee) health insurance, or allowed the employee to cover their same-sex spouse through an employee benefit flex savings plan. Because that spouse was not previously recognized as a spouse but should have been according to the Supreme Court, the IRS is allowing same-sex spouses to amend their income tax returns to remove that income. Essentially they are saying the health insurance benefit to the spouse was either deductible by the employer, or could have come out of the flex plan at pre-tax rather than after-tax dollars. The IRS says the change only applies to married couples, not those in an RDP. It also applies regardless of whether the state in which the employee resides recognizes the marriage.

Going forward it's better for both employer and employee to treat this as a pre-tax benefit, so this seems a nice change. The employee won't have as much tax withheld, and the employer won't have to pay as much payroll tax on employee compensation. The IRS

See **Windsor** page S8 >

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The Fine Line Between Family and Business

Mutual Dependency is Key to Keep Families Working Together

*(Editor's note — **Barry Graff** is the owner of Family/Business Systems, a business that focuses on family business succession planning and addresses the "hard" questions: the people issues that revolve around family and business. Barry is a Fellow in the Family Firm Institute.)*

The Family/Business Overlap is a central concept in the study of family-owned businesses. Simply stated, when family members work together in or share ownership of a business, it is virtually impossible for the business to function independent of the family, and vice versa.

This mutual dependency is, in fact, one of the major reasons for families being in business together. Success becomes a double success; growth of the business engenders family pride. Familiarity breeds trust, and family members can spend time together. These positive overlaps alone may be the major reason for the preponderance of family-owned businesses in the United States.

However, this overlap can also be a source of great stress. How do you tell your son or daughter, brother, sister or spouse, that they are not doing a good job? When a father and son clash over a strategic business decision, is this based upon different views of their market, differences in management styles that are generationally based, a good old-fashioned father-son struggle for power and control, or a mutual seeking of recognition, acceptance, and even closeness?

Examples of "family" versus "business" can be: Transition in management and leadership of company (business) versus aging and death of older generation (family). Choosing a competent successor (business) versus feeling accepted and recognized by parents (especially father) (family). Dividing ownership equitably, including recognizing each individual's contribution to the business (business) versus feeling equally loved by parents (family). Letting go of roles, relationships, and connections to the (business) versus defining the new relationships of the latter stages of life (family). Assigning the key roles to non-family members (business) versus defining family loyalty (family).

Barry Graff

As the family struggles to differentiate and resolve these issues, a number of themes frequently appear. One of these is triangulation. Simply put, this is the tendency in relationships to pull a third person into a problem when the two people involved feel stuck in resolving it.

Unfortunately, this is often done unilaterally and indirectly, so that when A and B are stuck, one or both approach C to complain about the other. The most frequent triangle family business consultants encounter is Father/Son/Mother—even when Mom is not playing an active role in the business.

Dad's "business" message to son may be, "I need to be sure that you are competent before I turn leadership over to you" (which may mean "lead like I do"). Son hears the "family" message "You've never really been the kind of son (man) I wanted you to be." Dad goes to Mom to complain about son's anger and disruptiveness with employees (business), and mom empathizes with her son's need for recognition (family). Son goes to mom to complain that dad is not supportive, (family), and mom, concerned about the business that she helped dad successfully build, tells son he has to try harder (business).

Fair Means Equal or Equitable

In families, fair usually means equal, especially when children receive rewards or gifts. In business, fair should mean equitable. Individuals, even one's own children, should get rewards commensurate with their performance in a particular role. Yet members of the second generation have been known to expect equal rewards even when playing a minor role or no role at all in the business. One way family business owners can cope with this tension is to create a policy for family employment. Define your vision of family employment and share your perspective in the appropriate time. Consider the challenges you will face as their employer. Evaluate each child's talents, skills, motives, and disposition within the context of a career in the business.

Love and Value

In the business, performance is evaluated in terms of production, competence, and commitment. Because sons and daughters always desire the love and approval of their parents, especially the father who has spent much more time at work than at home, a poor work evaluation feels like a parental rejection. This does not have to be the case. Family members should make use of techniques to routinely evaluate how they are doing and how they are perceived. They should ask their supervisor for honest feedback about what they do well and what they need to improve. The family member should absorb the constructive criticism with an open mind, ponder it, and integrate what was learned into a personal development plan.

Sibling Rivalry or Style Differences

Siblings, especially of the same sex, fight and compete as they grow up. When this behavior appears in the family enterprise, it is assumed that sibling rivalry is at play. While this may be a factor, the more important variable may well be a difference in management styles. One entrepreneurial sibling (who may have identified with dad) differs on many management and leadership dimensions from his or her managerial/administrative brother or sister. These may include delegation, risk-taking, and team orientation. But regardless of leadership styles, it is clear that emotional maturity, polished interpersonal skills, and high ethical and business values are minimum requirements for successful organizational management.

Similarities and Differences

In families, similarity is comforting. We remark happily about how family members, especially between generations, look, behave, or think alike. The common goals of working for the family business and making it successful are an extension of this dynamic. However, the business cannot succeed unless we recognize, value, and take advantage of differences in style and abilities. In the entrepreneurial stage, the "one-man band" is the model, but a professionally managed organization needs each individual to perform a specific role geared to his or her interests and abilities. Know each family member's abilities and interests, and encourage them to pursue their career passions—even if this leads them elsewhere.

Gender

In families, husbands and wives can be successful by choosing traditional gender roles, for example "breadwinner and homemaker." They can also lead their family successfully by adopting androgynous role definitions, where tasks are shared more equally. In business, talent cannot be wasted. Each person must fill the role his or her talent and motivation calls for. Rigidly adhering to a traditional or contemporary model can be of significant cost to the business. Inconsistent standards in training, promotion, and compensation will invariably lead to gender conflict. Resist the temptation to shelter a daughter or sister from the harsh demands of business. If company employment policy requires outside experience for sons, apply the same rules to daughters. The experience will prove invaluable in leadership preparation. Likewise, consider all qualified family members for succession and ownership.

Authority and Respect

Parents gain authority and respect just by being the older generation. Age, experience, and the remnants of dependency permanently qualify them as the leaders of the family. Business leadership also depends upon experience, but it is no more productive to use age to determine hierarchy and organizational role that it is to use gender. The organizational needs determine one's place in the hierarchy, and authority comes from competence and leadership.

These examples are not meant to sound pessimistic. Rather, they should remind families that clearly differentiating family from business is a cornerstone of success and satisfaction in the family-owned business. Proper response to the internal pressures caused by family/business confusion will help strengthen bonds among family members and build employee morale in the organization. ❑

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WINDSOR

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also made it optional for employers, in addition to employees, to amend open years to get back taxes that were paid on this income. This could be a nice refund for the employee who paid income tax on such benefits, but let's think about what's really involved for the employer. An employer who treated "non-spouse" health insurance benefits as income paid an approximate 7 percent payroll tax on those benefits and can amend to get that money back, but at what cost to go back and capture all the information and amend the returns? My guess is there won't be that much net benefit to amend for the change. Also expect that a lot of employees will be asking the employer to go back and provide documentation of the amount of benefits that were involved so that they can amend their own returns.

Of larger consequence to employers lies with the collective burden of a whole host of other employee benefit matters. For example, many same-sex couples will now be marrying, and by law must have an opportunity to amend things such as flexible savings accounts within 60 days of changing marital status. More consequential are all of the reviews needed to make certain that retirement plans will properly recognize a whole set of new relationships not previously viewed as spousal. The IRS made the effective date of its ruling September 16, 2013 and said that employers must treat same-sex spouses who were legally married in any jurisdiction the same as spouses under retirement plans of the employer, but they also acknowledged that further guidance would be necessary with no indication as to when it would be forthcoming.

The IRS also didn't seem to notice that some retirement plans fall under regulation of the Department of Labor, those established or regulated under the Employee Retirement Income Security Act (ERISA). To date, no announcements have come from the Department of Labor as to how they will address an entire new set of spouses.

It's important to keep in perspective that none of these changes would be necessary if an unconstitutional law hadn't been passed to begin with, and the changes are necessary. Sadly, all too often when politicians make bad decisions, business has the burden of fixing things. ❑

A Trustee's Liability: A Fiduciary's Perspective

Explore Best Practices to Limit Potential Liabilities for Trustees

*(Editor's note — **Brian McDermott** is the Chief Fiduciary Officer with Northern Trust in San Diego, a national wealth management firm.)*

It seems so simple. A person (the grantor) designates another person (trustee) to hold and manage assets for a third party (beneficiaries). Generally, the grantor will designate a trustee they feel will competently manage their assets and accomplish the trust's purpose.

The fiduciary duty of the trustee seems straightforward: treat named beneficiaries impartially; administer the trust by its terms; and manage the assets using investment prudence and tax efficiency. This role, however, can be incredibly complex. Any prospective trustee should take care to be sure they have a clear picture of their duties. After all, a trustee can be personally liable if things do go astray.

Being named a trustee in a document does not automatically make one the trustee after the triggering event (typically the incapacity or death of the grantor). To become a trustee, one must affirmatively accept their nomination. Care should be taken before accepting this responsibility. It is flattering to be a nominated a successor trustee by a family member, friend or professional associate, but the position is a job.

I strongly urge any prospective trustee to carefully read all trust documents prior to signing on. If you are unsure of the provision, hire an attorney to help you understand the practical application of this legal document. The drafting attorney is typically the best choice. If there is a nominated co-trustee(s), decide if you can work effectively together in order to carry out the grantor's wishes. Individuals nominated by grantors often team up with a professionals such as a corporate trustee or professional fiduciary.

Brian McDermott

Limiting your personal liability as a trustee can be managed by you through sound choices of outside advisors. We are fortunate in San Diego to have many competent trust and tax attorneys, CPA's, appraisers, insurance professionals, health care professionals and financial institutions. Reach out for help from people who are experienced in these many facets of trust administration.

You may be signing up to serve as trustee to wind down the affairs of the grantor after they pass away and distribute assets outright or as trustee of an ongoing trust for a beneficiary. This distinction is critical to understand as you may be serving as a fiduciary for a relatively short period of time in an estate settlement or for a much longer period of an ongoing trust. For ongoing trusts, make sure there is also a clear succession plan for you. Though court intervention is always an option it is can often be a lengthy one.

Understanding the character of assets, liquidity, family dynamics and beneficiary expectations is critical prior to acceptance. Some key documents to review include prior income tax and gift tax returns, financial statements including all bank, investment management, brokerage statements, real estate title searches, partnership and LLC agreements. Ask for it all.

If you have concerns about taking on this job, decline—but decline quickly. Having a long period of time pass before you decline could give the impression that you were serving as trustee de facto.

As a trustee, there are several critical best practices to limit any potential liability. If the trust holds an asset concentration (an asset class greater than 15 percent of the trust) then document the reason for the concentration and if you have plans to reduce that concentration. There may be compelling reasons to have concentrations in real estate or privately held companies but it is important to periodically document why you are choosing not to diversify.

Should you decide to sell real estate or privately held interests, obtain an independent, qualified third party appraisal of that asset. This will provide you some guidance on a reasonable selling price and insulate you against beneficiaries' criticisms that you "gave an asset away".

A concentration in a publically traded company is generally best reduced over several tax years. Though some individual stocks may significantly outperform the S&P 500 index over time, no one can predict which securities they are today. Concentrations may be fine for your own money, but not in a fiduciary account.

If the trust you are administering allows you to make discretionary distributions, it is recommended you have a defined process to make your discretionary decision. An example is to require the beneficiary to request a principal distribution in writing. You may need to request tax returns, medical or tuition bills. Consider sending approved discretionary distributions directly to the third party provider.

Finally, timely communication with vested beneficiaries is paramount. Send periodic financial statements or reports that include an accounting of all transactions and assets. This will maintain clear communication lines as well as helps to promote a mutually beneficial relationship between a trustee and beneficiaries as you implement the plan set forth by the grantor. And somewhere the grantor will smile. ❑

Estate Tax and Interest Rates—The New Normal

New Tax Exempt Changes Present Unique Planning Opportunities

*(Editor's note — **Mark Morris** is a partner with LevitZachs CPAs, one of the largest CPA firms in San Diego. Mark, an attorney and CPA, is a noted advanced estate planner.)*

An important tax planning focus for business owners has traditionally involved shifting their wealth from taxable estates. But a "new normal" for estate planning has emerged as a result of the large estate tax exemptions recently passed into law. Some experts estimate that less than 0.2% of Americans will now be subject to the estate tax. However, for those with concentrated wealth in their businesses or investment portfolios the estate tax remains highly relevant.

New higher income tax rates also shift the planning focus for many individuals from minimizing estate taxes to maximizing the so-called "step-up in basis" available for assets passing at death. Thus, a traditional bias for primarily using estate tax avoidance techniques needs re-examination. Example: Because of her accumulated wealth, Wilma's closely-held stock worth $1 million will be subject to the current 40% estate tax rate. Avoidance of this estate tax liability was potentially possible through a prior gifting arrangement involving her children. Yet since gifts carry over her near-zero stock basis to such donees, the combined California and federal income tax (and new Medicare Surtax) liability incurred on the stock sale gain following a gift almost completely offsets any presumed estate tax savings. When the maximum estate tax rate was 55% and the capital gains rate lower, this rate differential made the estate tax savings bias much stronger. Of course, the senior generation's income tax basis in an asset selected for a potential generational transfer remains highly relevant.

Within this mix of tax rate considerations there is another reality that must be considered. It should be no surprise that following a period of unusually low interest rates that near-term future rates will revert to their historical norms (and perhaps higher). Given this reality, those for whom the estate tax is still relevant should consider several interest-rate-sensitive planning techniques still available. Such techniques are based on published Internal Revenue Service (IRS) "applicable federal rates" or AFRs. Let's sample a few of these viable wealth transfer vehicles.

Mark Morris

One of the simplest and arguably most effective wealth transfer techniques is an "opportunity shift" achieved by providing working capital at low rates for the benefit of the next generation. Example: In September 2013, Fred is approached with a $1 million business opportunity providing potential substantial returns within just a few years. Instead of Fred making this investment, which will increase his own net worth and be subject to more future estate tax, he loans $950,000 to his daughter, Pebbles. That way, she obtains a 95% equity stake in the venture to accompany Fred's 5% investment. To be a bona fide loan for tax purposes, the September published AFR should be used which is only 0.25% per annum for a three-year interest-only balloon note.

Another popular estate planning technique that uses a similar low-interest rate, opportunity-shift concept (but in a more leveraged manner) has a rather unattractive name: "intentionally defective grantor trust" or IDGT. Business owners and other wealthy investors can transfer discounted equity interests to these grantor trusts to remove appreciating assets from their estates in exchange for low interest rate promissory notes on an income tax neutral basis. With time and proper adherence to formalities, such transactions achieve significant wealth transfer to future generations. In late 2012, many such trusts received gifted assets in anticipation of disappearing estate and gift tax exemptions. These now handsomely funded IDGTs are ripe for further wealth shifting if additional assets at frozen note values are exchanged. Moreover, with adroit planning, low-basis trust assets may be returned to the senior generation prior to death at no loss in estate tax savings while achieving the desired income tax basis adjustment at death. Even greater wealth transfers can be achieved by using private annuities to exchange assets in lieu of using promissory notes.

> "It should be no surprise that following a period of unusually low interest rates that near-term future rates will revert to their historical norms (and perhaps higher)."

A variation of the grantor trust with charitable implications, known as a "grantor charitable lead annuity trust" or G-CLAT also thrives when established in this current low-interest rate environment. Example: In September 2013, Betty, who is charitably-inclined, previously used her available $5.25 million exemption. She puts a $1 million asset with an average 6% yield into a G-CLAT. After a 20-year term, this trust distributes remaining assets to her sons and pays $57,680 to her favorite charities each year. Betty has no gift tax liability even though she previously exhausted her gift tax exemption but instead receives a valuable $1 million charitable deduction which reduces her otherwise significant 2013 income tax liability. Moreover, her sons will share about $1,085,000 on trust termination. This amount is actually more than they would receive had she not paid a dime to charity but instead accumulated all earnings with the asset itself and gifted the entire sum to her sons. Thus, in this instance she can truly "do well" for her family by "doing good" at the same time.

The "grantor retained annuity trust" or GRAT is another estate planning technique to consider in this lower-interest rate environment. Example: Barney places pre-IPO stock into a GRAT which provides that trust assets pass to his children's trust after paying Barney $30,000 annually for 20 years. The stock worth $1 million in September 2013 will use about $509,000 of his lifetime $5.25 million gift tax exemption. With the successful IPO, the GRAT equity interest shortly zooms to $15 million in value. If the current benchmark 2% rate remains the same when Barney unexpectedly dies in year 10 of the GRAT, current regulations provide that the maximum amount included in his estate is $1.5 million. However, suppose the benchmark rate on his premature death reaches 5%, then only $600,000 is included in his estate. If he survives the 20-year term, none of the stock will be included in his estate. So, regardless of Barney's longevity substantial estate tax savings can be achieved by placing appreciating assets within the GRAT.

Future tax rates and interest rates cannot accurately be predicted, but astute planning in this current low-interest rate environment can yield significant savings for the affluent business owner or investor. Since the estate tax is still relevant for such individuals, these interest-rate- sensitive techniques should definitely be considered as part of the planning process while still available. ❑

Business Family Planning in a Global World

The Challenges of Wealth Transfer and Succession Planning

(*Editor's note —* **Katharine Davidson***, a partner in the law firm of Henderson Caverly Pum & Charney, is a noted speaker in the estate planning arena with a focus on planning for the International Family and Business. She is an ACTEC Fellow and a leader of the Society of Trust & Estate Professionals (STEP), an international planning organization.)*

Developing a viable succession plan is one of the most critical and challenging issues currently facing the global business owner. Multinational families owning controlled businesses face particularly complex challenges, including income, estate and gift tax issues, questions regarding inheritance and succession rights, matrimonial property regimes, marital domicile, property rights and tax residency issues as well as cultural expectations that vary from jurisdiction to jurisdiction. These concepts are often unfamiliar and counterintuitive to business owners and their advisors who may counsel purely domestic families.

High net worth families are major players in today's globally integrated economy. Marriages among different nationalities continue to rise, frequently producing dual citizen children who may or may not live in the United States. In addition, many foreign-born business owners have relocated to the United States from other emerging market countries to expand their holdings and invest in U.S. property. When non-U.S. family members move to America, whether temporarily or permanently, preimmigration advice and planning is essential. Further, many U.S. persons work abroad in connection with foreign branches or subsidiaries of their family businesses, bringing foreign tax consequences into the picture along with U.S. taxes. The risk of double taxation is significant for families with international connections and property, but with proper planning the risk can be mitigated.

Katharine Davidson

The dynamics of the modern global family continue to evolve with the ever changing global financial marketplace. These forces play an important role in developing an appropriate business succession plan when the business owner is deciding whether the business should remain in the family and be managed by family members, or whether to bring in a professional management team or sell the company to a commercial buyer or private equity investor. For example, in many Middle Eastern and Latin American countries, respect for the family is a high priority and businesses are often passed down from generation to generation. Hinduism experts note that the desire to keep money and businesses within the family group is particularly strong in India, following the Jati (caste) system of deep respect for the previous generation and family tradition. Business owners in Europe and Asia generally show a preference of keeping businesses within the family to be passed down to the next generation and often because of fear of betrayal by nonfamily managers or owners. Gender also plays an important role in business succession, particularly in the Middle East and Europe.

> "The dynamics of the modern global family continue to evolve with the ever-changing global financial marketplace."

Surprisingly, many high net worth individuals around the world do not have a will, and the lack of appropriate planning creates difficulties for transferring business interests and other assets. In some cultures, such as many in East Asia, individuals are uncomfortable thinking or talking about their potential demise, much less planning for it.

Some countries have heirship laws that prescribe how part or all of a decedent's estate must be divided among heirs. Such laws are common in civil law jurisdictions, such as France, Germany, Italy, Spain and Latin America. While trusts are commonplace in the United States, they may not be recognized in other jurisdictions or the use of a trust may even cause adverse tax consequences to the settlor or trust beneficiaries.

The type of investment vehicle used to operate a business must be carefully analyzed and considered in the international context to achieve the desired tax benefits. The use of foreign corporations in a holding structure in some situations may have adverse U.S. income and estate tax consequences, whereas the use of a pass-through entity may achieve more favorable tax results. However, tax planning must be well coordinated because planning for income tax purposes does not always line up with planning for estate and transfer tax purposes. Moreover, the tax consequences between two countries may not always coincide depending upon how a jurisdiction defines residency and domicile, its situs rules for sourcing property, and whether a tax treaty may be applicable, among other factors. In every case, it is critical that advisors from all jurisdictions involved work together to formulate a multi-jurisdictional plan.

Care should also be taken to address the tax and nontax implications to business owners and the business itself in the event of the sale or transfer of the business, upon death and divorce of a family owner or where a surviving spouse owns an interest in the company but is not involved with the business.

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Never too Early for Exit Plan

Research: Few Businesses Have Plan in Place

*(Editor's Note — **John Henberger Jr.** is President and Founder of Henberger Group, a Merger & Acquisition Advisory firm to privately held and family owned businesses. He has been a successful business owner in the Southern California area for more than 35 years, and successfully founded, acquired, ran and sold a variety of businesses.* ***Robert Copeland****, a noted M&A attorney, is a partner in the Sheppard Mullin law firm.)*

Are You Ready For That Exit Event? This is a question frequently discussed in business magazines, law and accounting firm blogs and among wise family business owners and members.

There's a lot more than meets the eye. Indeed any "exit" means different things to different business owners: some want to keep the business in the family, some want to have the business continue operating with its trusted staff and employees and some want to convert the results of hard work into liquidity for themselves, family and even charity. Sadly, the research indicates that 93 percent of closely-held business owners know they should have an exit plan, BUT only 13 percent do.

Regardless of the "exit", the following key areas need focused attention:

Business Operations

Is there a strategic plan in place focused on value creation for the business? Has performance been measured against plan? Are business forecasts made and met? Does it integrate your exit strategy into your planning? Does the business have audited financials and, if not, what is the quality of its financial records? A strategic or financial buyer of the business will have these topics at the top of the list. Valuations will be significantly lower based upon a lack of reliable qualitative and quantitative planning and records. Or the valuation can be higher, not only based on past success but how the management team has prepared the business for continued prosperity. These same attributes are equally important if the plan is to "leave the business to the kids" or to set up an ESOP to the benefit of the employees. In the latter case, the benefit of an ESOP turns largely on achieving a high valuation for the business—a valuation that will be acceptable to the bank funding the ESOP. In the former instance, unless there has been a management succession plan in place for a few years "the kids" ability to run the company will be suspect.

John Henberger

Robert Copeland

A Word About Housekeeping

It is so obvious it barely needs repeating, but this is important. The records of the business should contain complete copies of the legal documents audited by an attorney. If the business is regulated, evidence of its compliance with applicable legal requirements should be contained in the records of business.

What About Buy Sell Agreement?

First, is it up to date or do you even have one? Don't forget it is not up to date if the valuation has not been done. Second don't you want to be in control over the person you partner with? What if something adverse happens with your original partner, do you want to partner with their spouse? Where the business is to be "passed on" within the family, the consequences under a buy sell which will continue to govern shareholder relationships should be considered. In a typical family business to be transferred internally (with some shares already owned by the kids) usually the deceased parent's shares go into a trust, the trustee of which is usually the surviving parent. In addition, the survivor usually receives ownership of his or her shares outright. Now the survivor controls 100 percent of the shares. Lastly, depending on the attitudes of the survivor, there could be some significant changes in direction. This is where estate planning and business succession planning intersect heavily. While more is said later on the topic, here is where the business, legal and estate planning advisors need to coordinate and talk things over.

Choosing Advisors

That leads us logically to a discussion about choosing advisors and who and how one selects them. While an article, co-authored by two advisors, may be suspect to the extent it promotes the use of advisors, truth be known any business needs some advisors—and as a business grows and prospers the variety and sophistication of advisors increases.

It's when the chips are down and a possible sale is on the horizon that the advisors to the business and to owners of the business should be evaluated in terms of expertise with the marketing and sale of a business as well as to make recommendations on necessary estate and financial planning issues.

Employees: Your Biggest Asset

Fast forward now to the point where the decision has been made "to exit" or "engage in a liquidity event," which are just fancy names for a sale of the business; you've engaged an investment banker to conduct a sale process and expert advisors have been retained to assist in the sale of the business. What is now the most critical issue you now face? If your business is like most others, the real assets of the business go home at night—and return to work in the morning. An exit or change of control can and usually will send shock waves through an organization. "Will my job be cut?" "Will the new owners be hard to work for?" "Should I get busy looking for a new place to work?"

It's critical to consider and plan the announcement of the sale of the business to the employees of the business. In part it will be an important early discussion with all possible buyers—in fact some potential buyers may be ruled out based on their attitude regarding the business workforce.

> "When do you start your intelligent exit? Time is now."

Among other considerations, owners often set up "stay" bonus programs to incentivize employees, especially key ones to stay and assist in the transition of the business to its new owners.

Exiting Requirements

So what do you need to intelligently exit the business? The business needs to be performing and, as noted, should have quality financial records evidencing that performance has been pursuant to organized planning and execution. "Housekeeping" needs to be in order. The business owner needs to have a good picture of the range of values the business will be viewed as possessing by the likely universe of buyers. The owner needs to determine that if such value can be realized, will it be enough for the post-ownership life of the owner? Owners need advisors to assist in sorting through these questions.

When do you start your "intelligent exit?" The time is now. To achieve your exit strategy goals and to prepare the business correctly you need a minimum of 18 to 36 months or more before the sale process is triggered. ❑

GLOBAL

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In some jurisdictions, family disputes over a business have ended up in courts, jeopardizing the company until the matter has been resolved.

A family business owner has built the business or inherited it must consider whether to enter into a premarital agreement before marriage to specifically set forth how the business interest will be owned during marriage and in the event of divorce. Similarly, a post-marital agreement can be put into place between spouses to address this issue, among others. Both premarital and post-marital agreements are enforceable in California if they are entered into in accordance with specific statutory rules. In contrast, such agreements may not be formally binding in some countries (although the trend is shifting toward enforceability) and often there is uncertainty as to what will be included in the marital pot for division upon divorce. When a business succession plan involves children in difficult marriages, extra thought must be given in how to address a potential divorce and the impact it may have upon the business.

Finally, a successful business succession plan should generally include a shareholders, operating or buy-sell agreement to address potential conflicts among owners before they arise, and specifically provide for how certain potentially difficult situations will be handled. ❑

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